
The Parliament of the Commonwealth of Australia

An advisory report on the Territories Law Reform Bill 2010

Joint Standing Committee on the National Capital and External Territories

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Chair's foreword

In 2002, the then Minister for Regional Services, Territories and Local Government tabled in the Norfolk Island Legislative Assembly, a document outlining the Government's interests in and obligations to Norfolk Island. The policy document stated:

..the Federal Government retains ultimate responsibility for the welfare of all Australian citizens throughout Australia and has an obligation to protect their basic individual rights. It must therefore encourage strong partnership with all States and Territories.

More recently, in the same vein, the Minister for Home Affairs in his second reading speech stated that the reforms contained in the Territories Law Reform Bill 2010 (the Bill) represent 'the Government's ongoing commitment to fulfilling its obligations to provide the legislative frameworks for the future growth and sustainability of Australia's territories.'

The Bill will amend the *Norfolk Island Act 1979* (Cwlth) to strengthen accountability and transparency through reform of Norfolk Island's administrative law, governance, electoral and financial structures. The Bill also has a second feature, which is to provide a vesting mechanism for powers and functions under Western Australian laws applied in the Indian Ocean Territories. While the Bill has two purposes, the Bill's main component relates to Norfolk Island.

The *Norfolk Island Act 1979* (Cwlth) granted self government to Norfolk Island and empowers the Norfolk Island Legislative Assembly to make laws for the peace, order and good government of the Territory. This is with the exception of only four areas: acquisition of property otherwise than on just terms, raising defence forces, coining money, and euthanasia. It is by virtue of the Norfolk Island Act that Norfolk Island's Legislative Assembly and system of Government is unique.

The Bill provides the Commonwealth Government with greater oversight and scrutiny of Norfolk Island legislation in regard to ensuring compliance with Australia's international obligations and other areas of national interest, but it does not diminish the legislative power of the Norfolk Island legislature.

In May 2009, when the Minister for Home Affairs announced the proposed reforms relating to Norfolk Island, (now contained in the Bill) the Government of Norfolk Island welcomed moving towards greater transparency and accountability to strengthen administrative and financial systems and thereby improving Norfolk Island's long term stability.

Since that time, a new Legislative Assembly has been elected and has presented its concerns about the Bill to the committee. The committee has considered the general

concerns raised by the Government of Norfolk Island in regard to various aspects of the Bill and has also taken into consideration information received from Norfolk Island residents and organisations.

Based on the views and evidence presented to it, the committee has recommended that the Bill be passed. In addition, the committee recommended:

- The Attorney-General's Department continue to consult with the Government of Norfolk Island, its Administration and the Norfolk Island community on the content of regulations that establish the reform elements of the Bill. This includes the timeframe for implementation of regulations.
- Improving the timeframe for Commonwealth scrutiny of Norfolk Island legislation.
- A review of items under Schedules 2 and 3 of the Norfolk Island Act.
- Removal of Schedule 1, Part 2 – Amendments relating to elections, from the Bill and deferral of this matter until 2011.

Notwithstanding consultation to develop regulations, it is important that the Bill be considered and passed by the Commonwealth Parliament in the intended timeframe to allow for the financial management framework to be implemented prior to the start of the 2010-11 financial year.

Further, the committee received evidence that the governance reforms will undermine the consensus style of democracy practiced by the Norfolk Island Legislative Assembly. This style of democracy was likened to that which operates on the Isle of Mann and the Canadian Northwest Territories. This is similar to how local government operates in other Australian jurisdictions and is not commensurate with the Norfolk Island Legislative Assembly's status as a Territory legislature.

In this regard, the committee has supported the principle underlying the governance reforms which not only will improve the accountability and transparency of the Norfolk Island Legislative Assembly and Norfolk Island Government, but together with the administrative law and financial reforms will assist in ensuring a robust and efficient system of self government.

In addition, the committee has received evidence that implementation of the Bill will not present a financial cost to the Government of Norfolk Island or its Administration, with ongoing assistance to be provided by Commonwealth agencies.

On the committee's behalf, I thank the Government of Norfolk Island and its Administration, individuals and organisations who contributed to the inquiry either by lodging a submission, appearing as a witness or extending assistance to the committee during the course of the inquiry.

Senator Kate Lundy
Chair

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Terms of reference

On 18 March 2010, the Senate resolved that the provisions of the Territories Law Reform Bill 2010 be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry and report by 11 May 2010.



List of abbreviations

AAT	Administrative Appeals Tribunal
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
APS	Australian Public Service
ART	Norfolk Island Administrative Review Tribunal
CEO	Chief Executive Officer
Cwlth	Commonwealth
DSL	Digital Subscriber Line
DVA	Department of Veteran's Affairs
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
GFC	Global Financial Crisis
IFRS	International Financial Reporting Standards
IOTs	Indian Ocean Territories
MLA	Member of the Legislative Assembly
MRT	Migration Review Tribunal
NI	Norfolk Island
NIDS	Norfolk Island Data Services

NIRSL	Norfolk Island sub branch of the Returned and Services League of Australia
NRMP	Natural Resource Management Plan
PAEC	Public Accounts and Estimates Committee
SDAs	Service Delivery Arrangements
SSAT	Social Services Appeals Tribunal
WA	Western Australia



List of recommendations

1 Introduction

Recommendation 1 (paragraph 1.60)

The committee supports the general provisions of the Territories Law Reform Bill 2010 and recommends that the Bill be passed by the Senate.

Recommendation 2 (paragraph 1.61)

The committee recommends that the Attorney-General's Department continue to consult with the Government of Norfolk Island, the Norfolk Island Administration and Norfolk Island community in regard to the content of regulations (including the timeframe for their development and entering into force) relating to the Territories Law Reform Bill 2010.

2 Part 1 – General amendments

Recommendation 3 (paragraph 2.61)

The committee recommends that Commonwealth scrutiny of Norfolk Island legislation be dealt with expeditiously to minimise the legislative assent timeframe on these matters.

Recommendation 4 (paragraph 2.62)

The committee recommends that the Commonwealth Government in consultation with the Government of Norfolk Island, undertake a review of items under Schedules 2 and 3 of the *Norfolk Island Act 1979* (Cwlth).

3 Part 2 – Amendments relating to elections

Recommendation 5 (paragraph 3.27)

The committee recommends that Part 2 – Amendments relating to elections be removed from the Territories Law Reform Bill 2010.

The Commonwealth Government should consult with the Norfolk Island Government and community about the proposals for electoral reform and reintroduce amending legislation to the Commonwealth Parliament in 2011.

When the amending legislation is tabled in the Commonwealth Parliament, it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.

